

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD J. ZALAC,

Plaintiff,

v.

CTX MORTGAGE CORPORATION, a
Delaware Corporation; THE FEDERAL
NATIONAL MORTGAGE ASSOCIATION, a
United States Government Sponsored Enterprise ;
JPMORGAN CHASE, a National Association,
d/b/a CHASE HOME FINANCE, LLC.,
NORTHWEST TRUSTEE SERVICES, INC., a
Washington Corporation, MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC., a Delaware Corporation, and DOE
DEFENDANTS 1-10,

Defendants.

NO. 2:12-CV-01474

**JOINT STATUS REPORT &
DISCOVERY PLAN**

Pursuant to the Court's Order Regarding Initial Disclosure, Joint Status Report and Early Settlement of October 9, 2012, the parties submit the following Joint Status Report and Discovery Plan.

1. NATURE AND COMPLEXITY OF THE CASE.

a. **Plaintiff's Statement:** This is an action was originally brought by Plaintiff, alleging claims for declaratory relief, permanent injunction, wrongful foreclosure/irregularities

1 in proceedings (*RCW 61.24, et seq.*), violation of the Washington State Consumer Protection Act
 2 (*RCW 19.86, et seq.*), and violation of the *RCW 9A.82, et seq.* Plaintiff reserved claims and the
 3 right to amend his Complaint to plead claims for declaratory relief, fraud and misrepresentation,
 4 quiet title, trespass, and violation of the Federal Fair Debt Collection Practices Act (*15 U.S.C. §§*
 5 *1962, et seq.*) This action was initiated on or about July 12, 2012, under King County Superior
 6 Court Case No. 12-2-23547-3 KNT.

7 On August 28, Defendants, THE FEDERAL NATIONAL MORTGAGE
 8 ASSOCIATION, a United States Government Sponsored Enterprise (hereinafter "Fannie Mae");
 9 JPMORGAN CHASE, a National Association, d/b/a CHASE HOME FINANCE, LLC.
 10 (hereinafter "Chase", and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a
 11 Delaware Corporation (hereinafter "MERS"), removed this action, pursuant to *28 USC 1332,*
 12 *1441 and 1446.* Dkt 1. No other named Defendant has formally joined in the removal.

13 On September 20, 2012, Defendant, CTX MORTGAGE CORPORATION, a Delaware
 14 Corporation (hereinafter "CTX"), filed a Motion to Dismiss, pursuant to *Fed. R. Civ. P.*
 15 *12(b)(6).* Dkt. 8.

16 On November 16, 2012, the Court granted CTX's Motion. Dkt. 19.

17 This case will necessarily involve applying the recent Washington Supreme Court's
 18 decision in *Bain v. Metropolitan Mortgage*, 175 Wn.2d 83, ___ P.3d ___ (2012) (hereinafter
 19 "*Bain*"), to the facts of this matter, as adduced through discovery. Given the Washington
 20 Supreme Court's refusal/inability to resolve the second question certified by Judge John
 21 Coughenour in the *Bain* matter, this case will remain an extremely complex case.
 22

1 **b. Defendants' Statement:**

2 **Chase, Fannie Mae and MERS:** Chase, Fannie Mae and MERS deny they are liable
3 to Plaintiff for any of the relief sought on any of his claims. Furthermore, Chase, Fannie Mae
4 and MERS deny the Complaint sets forth any plausible claim, as it challenges the ownership and
5 servicing transfers of his loan without offering any plausible bases for those challenges. This is
6 a simple case and the concerns identified by the Washington Supreme Court in *Bain* are simply
7 not applicable to Plaintiff's claims.

8 **Northwest Trustee:** Northwest Trustee denies it is liable to Plaintiff for any relief
9 sought on the claims asserted against Northwest Trustee. Northwest Trustee denies Plaintiff's
10 Amended Complaint sets forth any plausible claim that give rise to a claim against Northwest
11 Trustee. Northwest Trustee agrees with Defendants Chase, Fannie Mae and MERS that this is a
12 simple case and concerns identified in *Bain* are inapplicable.

13 **2. ADR.**

14 The parties believe ADR can best be accomplished through mediation, pursuant to *CR*
15 *39.1(c)*. The parties request mediation be scheduled no later than 45 days after the completion
16 of discovery.

17 **3. JOINDER OF PARTIES.**

18 Joinder of all parties should be accomplished within 45 days of filing this Report, subject
19 to the joinder of necessary and proper parties identified through discovery. Plaintiff reserves the
20 right to amend his Complaint to add additional parties.
21
22

1 **4. DISCOVERY PLAN.**

2 **a. Fed. R. Civ. P. 26(a) conference and Fed. R. Civ. P. 26(f) Initial Disclosures.**

3 The *Fed. R. Civ. P. 26(a)* and *(f)*, conference occurred on November 6, 2012. The parties served
4 their Initial Disclosures on November 13, 2012, pursuant to the Court's scheduling order.

5 **b. Plaintiff.** A date should be set for the parties to provide initial disclosures and
6 engage in a discovery conferences, pursuant to *Fed. R. Civ. P. 26(a)* and *(f)*. Discovery issues
7 include, without limitation, the existence and extent of the subject debt owed to these
8 Defendants, the source of authority for Defendants to declare a default on the subject obligation
9 (*RCW 61.24.030*) and MERS authority, if any, in assigning the subject Note and Deed of Trust
10 and the appointment of a successor trustee (*RCW 61.24.010*), the consideration, if any, paid for
11 the assignment and the identity of the entity who paid said consideration, the identity of the true
12 owner and "holder" of the subject Note (*RCW 61.24.030(7)*), and the current location of the
13 subject Note. No limitations in discovery should be imposed on discovery. Given the
14 probability that Defendants will attempt to impose limitation on discovery or interpose
15 objections, it would be prudent to consider the appointment of a discovery masters. Otherwise,
16 discovery should be managed in accordance with Federal and Local Civil Rules. There is no
17 current basis to impose protective orders at the outset of discovery, pursuant to *Fed. R. Civ. P.*
18 *26(c)*. It would be advisable to require a Joint Status Report at the conclusion of discovery to
19 review the efficacy of ADR, pursuant to *CR 16*. Given the current status of discovery, the
20 potential difficulties in locating relevant witnesses and the potential difficulties in obtaining
21 documentary evidence from some of the corporate defendants and their agents, Plaintiff requests
22 discovery be concluded no earlier than seven (7) weeks of trial.

1 c. **Chase, Fannie Mae and MERS:** Defendants believe discovery may be
2 needed about the origination of Plaintiff's loan, the servicing of Plaintiff's loan, Plaintiff's
3 defaults and the non-judicial foreclosure process. Defendants' position is there is no need to
4 appoint a discovery master.

5 d. **Northwest Trustee:** Northwest Trustee agrees with Chase, Fannie Mae and
6 MERS.

7 e. **Changes to Limitations on Discovery.** The parties do not currently see a
8 need to change the discovery limitation imposed by the Federal Rules of Civil Procedure and the
9 Local Rules for the Western District of Washington.

10 f. **Statement of How Discovery Will be Managed to Minimize Expense.** The
11 parties agree to cooperate in good faith in all aspects of discovery, to use their best efforts to
12 comply with discovery requests and to act reasonably in propounding discovery.

13 g. **Other Orders.** At this time, the parties do not believe any order should be
14 entered by the Court under *Fed. R. Civ. P. 26(c)* or *CR 16(b)* or *(c)*.

15 5. **DATE FOR COMPLETION OF DISCOVERY.**

16 The parties agree that discovery must be completed 120 days prior to trial, in accordance
17 with *CR 16(f)*. Presuming a trial date of September 16, 2013, the discovery cutoff date should
18 be May 17, 2013.

19 6. **USE OF MAGISTRATE**

20 The parties do not wish to use a full-time Magistrate to conduct any or all of this case.

21 7. **BIFURCATION.**

22 This matter should not be bifurcated.

13. DUE DATE FOR SERVICE.

All parties have been served.

14. SCHEDULING CONFERENCE.

The parties do not believe there is a need for a scheduling conference.

15. CONSENT TO VIDEO

No party has an objection to having hearings in this matter video recorded.

DATED this 19th day of November, 2012.

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